

AMENDED IN SENATE APRIL 13, 1998

SENATE BILL

No. 2187

Introduced by Senator Schiff

February 20, 1998

An act to amend ~~Section 1801~~ *Sections 1801 and 1801.5* of the Welfare and Institutions Code, relating to youthful offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 2187, as amended, Schiff. Youthful offenders: continued treatment.

Existing law requires the court to order the Department of the Youth Authority to continue the treatment of a person who is otherwise eligible for discharge from the control of the department if the court, after *the filing of a petition for further detention by the prosecuting attorney and* a full hearing, is of the opinion that discharge of the person would be physically dangerous to the public for specified reasons. *Existing law provides that if, after the court hearing, the person is ordered to remain subject to the control of the department, the person is entitled to request a jury trial on the question of whether he or she is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.*

~~This bill would instead require the court to make that order if it finds by a preponderance of the evidence that discharge of the person would be physically dangerous to the public for specified reasons.~~

This bill would instead provide that, upon review of the petition to further detention as specified, the court shall order

a hearing to determine if probable cause exists to believe that discharge of the person would be dangerous to the public for specified reasons. If, following the hearing, probable cause is found, a jury trial or, if a jury is waived, a court trial would be required to be held to determine if the person is physically dangerous to the public. Because this bill would impose expanded duties on court personnel, it would create a state-mandated program. The bill would also provide that “mental deficiency, disorder, or abnormality” includes a specified congenital or acquired condition.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1801 of the Welfare and
 2 Institutions Code is amended to read:
 3 1801. (a) If a petition is filed with the court for an
 4 order as provided in Section 1800, ~~the~~ and, upon review,
 5 the court determines that the petition, on its face,
 6 supports a finding of probable cause, the court shall order
 7 that a hearing be held pursuant to subdivision (b). The
 8 court shall notify the person whose liberty is involved,
 9 and, if the person is a minor, his or her parent or guardian
 10 (if that person can be reached, and, if not, the court shall
 11 appoint a person to act in the place of the parent or
 12 guardian) of the ~~application~~ hearing, and shall afford the
 13 person an opportunity to appear ~~in court at the hearing~~
 14 with the aid of counsel ~~and of process to compel~~

~~attendance of witnesses and production of evidence.~~
When the person is unable to provide his or her own
counsel, the court shall appoint counsel to represent him
or her.

~~If after a full hearing the court finds by a
preponderance of the evidence that discharge of the~~
*The probable cause hearing shall be held within 10 calendar
days after the date the order is issued pursuant to this
subdivision.*

*(b) At the probable cause hearing, the court shall
review the petition and the accompanying evaluation
and shall determine whether there is probable cause to
believe that discharge of the person would be physically
dangerous to the public because of his or her mental or
physical deficiency, disorder, or abnormality, the court
shall order the Youth Authority to continue the treatment
of the person. If the court finds that discharge of the
person from continued control of the authority would not
be physically dangerous to the public, the court shall
order the person to be discharged from control of the
authority.* ~~disorder, or abnormality.~~ *If the court
determines there is not probable cause, the court shall
dismiss the petition and the person shall be discharged
from the control of the authority at the time required by
Section 1766, 1769, 1770, 1770.1, or 1771, as applicable. If
the court determines that there is probable cause, the
court shall order that a trial be conducted to determine
whether the person is physically dangerous to the public
because of his or her mental or physical deficiency,
disorder, or abnormality.*

*(c) As used in this section and in Section 1801.5,
“mental deficiency, disorder, or abnormality” includes a
congenital or acquired condition affecting the emotional
or volitional capacity that predisposes the person to the
commission of criminal acts in a degree constituting a
danger to the health and safety of others.*

*SEC. 2. Section 1801.5 of the Welfare and Institutions
Code is amended to read:*

~~1801.5. If the person a trial is ordered returned to the
Youth Authority following a hearing by the court, the~~

1 ~~person, or his or her parent or guardian on the person's~~
2 ~~behalf, may, within 10 days after the making of such~~
3 ~~order, file a written demand that the question of whether~~
4 ~~he or she is physically dangerous to the public be tried by~~
5 ~~a jury in the superior court of the county in which he or~~
6 ~~she was committed. Thereupon, pursuant to Section 1801,~~
7 ~~the trial shall be by jury unless the right to a jury trial is~~
8 ~~personally waived by the person, after he or she has been~~
9 ~~fully advised of the constitutional rights being waived,~~
10 ~~and by the prosecuting attorney, in which case trial shall~~
11 ~~be by the court. If the jury is not waived, the court shall~~
12 ~~cause a jury to be summoned and to be in attendance at~~
13 ~~a date stated, not less than four days nor more than 30 days~~
14 ~~from the date of the demand order for a jury trial. The~~
15 ~~court shall submit to the jury, or, at a court trial, the court~~
16 ~~shall answer, the question: Is the person physically~~
17 ~~dangerous to the public because of his mental or physical~~
18 ~~deficiency, disorder, or abnormality? The court's~~
19 ~~previous order entered pursuant to Section 1801 shall not~~
20 ~~be read to the jury, nor alluded to in such the trial. The~~
21 ~~person shall be entitled to all rights guaranteed under the~~
22 ~~federal and state constitutions in criminal proceedings.~~
23 ~~The trial shall require a~~ A unanimous jury verdict;
24 ~~employing~~ shall be required in any jury trial. As to either
25 a court or a jury trial, the standard of proof shall be that
26 of proof beyond a reasonable doubt.

27 SEC. 3. Notwithstanding Section 17610 of the
28 Government Code, if the Commission on State Mandates
29 determines that this act contains costs mandated by the
30 state, reimbursement to local agencies and school
31 districts for those costs shall be made pursuant to Part 7
32 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the
34 claim for reimbursement does not exceed one million
35 dollars (\$1,000,000), reimbursement shall be made from
36 the State Mandates Claims Fund.

37 Notwithstanding Section 17580 of the Government
38 Code, unless otherwise specified, the provisions of this act

1 *shall become operative on the same date that the act*
2 *takes effect pursuant to the California Constitution.*

O

